

GROUND LEASE

This lease made effective as of the 1st day of January, 2016, in pursuance of the *Short Forms of Leases Act*, between:

THE CORPORATION OF THE CITY OF LONDON
(hereinafter sometimes referred to as the "Landlord"
or the "City")

OF THE FIRST PART

and

WESTERN FAIR ASSOCIATION
(hereinafter sometimes referred to as the "Tenant" or
the "Association")

OF THE SECOND PART

WHEREAS:

(1) Each of the Landlord and the Tenant are the legal and beneficial owners of the lands more particularly described in Schedule A attached hereto (the "C-WF Lands"), each as to an undivided 50% interest as tenants in common;

(2) The Tenant is a corporation incorporated under the laws of the Province of Ontario and governed by the *Agricultural and Horticultural Organizations Act* and operates independently of the Landlord;

(3) The Tenant is the legal and beneficial owner of the lands more particularly described in Schedule B attached hereto (the "WF-Lands");

(4) The City and the Association entered into an Indenture dated November 30, 1989 in order to set forth their respective arrangements and covenants with respect to the C-WF Lands. The said Indenture being amended by an Indenture dated September 27, 1995 and further amended by an Indenture dated August 7, 2007 (collectively the "Original Lease");

(5) The Original Lease expires on November 30, 2019;

(6) The Ontario Lottery and Gaming Corporation ("OLG") will be licensing all or a portion of one of the Buildings for gaming (the "Gaming Premises") and as a result OLG is requiring that the Association secure the exclusive use of the Gaming Premises and the non-exclusive use of certain common areas servicing the Gaming Premises and the non-exclusive use of the parking lot located on the Lands, for up to forty (40) years from the date the OLG issues a gaming licence for the Gaming Premises;

(7) The Association is also exploring additional opportunities and the Original Lease would require a further amendment in order to address any financing requirements of the Association with respect to such opportunities;

(8) The City and the Association acknowledge and agree it is in their best interests to replace the Original Lease with this Lease in order to better reflect and clarify their respective rights, responsibilities and financial arrangements now and in the future;

NOW THEREFORE THIS LEASE WITNESSES that in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto hereby confirm the veracity and accuracy of the foregoing recitals, and further agree to the following matters:

**ARTICLE 1
DEFINITIONS, INTERPRETATION AND SCHEDULES**

1.01 Definitions

In addition to any other words, terms or phrases specifically defined elsewhere in this Lease, the terms and phrases set out below shall have the meanings respectively ascribed to them as follows:

"Additional Rent" has the meaning ascribed to it in Section 5.02;

"Agriplex" means the building shown and identified on the plan attached as Schedule C as the Agriplex, including all fixtures, equipment and other improvements made to or erected in such building from time to time;

"Arbitration" means arbitration in accordance with Article 20;

"Arts Building" means the building shown and identified on the plan attached as Schedule C as the Arts Building, including all fixtures, equipment and other improvements made to or erected in such building from time to time;

"Base Rent" means the rent payable pursuant to Section 5.01 of this Lease;

"Buildings" mean any buildings, including without limitation, all fixtures, equipment and other improvements which have been made to or constructed on the Lands on or prior to the Commencement Date, including any New Buildings located on the Lands from time to time;

"Canada Building" means the building shown and identified on the plan attached as Schedule C as the Canada Building, including all fixtures, equipment and other improvements made to or erected in such building from time to time;

"Commencement Date" has the meaning ascribed to it in Section 3.02;

"Confederation Building" means the building shown and identified on the plan attached as Schedule C as the Confederation Building, including all fixtures, equipment and other improvements made to or erected in such building from time to time;

"CPI" means:

- (i) the Consumer Price Index as published by the Bank of Canada or, if there is no such Consumer Price Index published by the Bank of Canada (or by a successor or other governmental agency, including a provincial agency); or
- (ii) if the Consumer Price Index is no longer published, an index published in substitution for such Consumer Price Index or any replacement index mutually agreed upon by both the Landlord and Tenant acting reasonably.

"C-WF Building" means a building owned by the City and the Association in accordance with Section 2.03;

"C-WF Lands" shall have the meaning to it in the recitals;

"Emergency" means any circumstance(s) or event(s) involving danger to, or the safety of, persons, danger of property damage or loss and/or suspension of any utility service to any one or more of the Buildings whether actually occurring or imminent;

"Events of Default" has the meaning ascribed to it in Section 18.01;

"Gaming Premises" shall have the meaning ascribed to it in the recitals;

"Grandstand" means the building shown and identified on the plan attached as Schedule C as the Grandstand, including all fixtures, equipment and other improvements made to or erected in such building from time to time;

"Head Office" means the building shown and identified on the plan attached as Schedule C as the Head Office, including all fixtures, equipment and other improvements made to or erected in such building from time to time;

"Lands" mean the C-WF Lands and the WF-Lands and such other lands which may be purchased by the Association after the Commencement Date;

"Landlord's Interests" mean the percentage ownership interests of the Landlord in the various parts of the Project from time to time;

"Lease" means this lease, including all of the Schedules which are annexed hereto, all subsequent amendments, if any, as evidenced by memoranda in writing duly executed by the Landlord and the Tenant, and all documents which are herein referred to and stipulated to form part of this Lease;

“Lease Oversight Committee” means the committee established under Article 21.

“Lease Year” means a period of the Term from and including the first day of January in any year to and including the last day of December in the same year;

“Licences” mean any and all standardbred racing licences and gaming licences, as well as all service or operating agreements pertaining to the Lands (or any part thereof) which the Tenant may hold either legally or beneficially;

“New Buildings” mean any buildings, including, without limitation, all fixtures, equipment and other improvements which are made to and constructed by the Tenant on the Lands after the Commencement Date. For clarity, a sketch of the Lands with all buildings located on the Lands as at the Commencement Date is attached to this Lease as Schedule C;

“Original Lease” shall have the meaning ascribed to it in the recitals;

“Paddock” means the building shown and identified on the plan attached as Schedule C as the Paddock, including all fixtures, equipment and other improvements made to or erected in such building from time to time;

“Prime Rate” means the annual rate of interest from time to time publicly quoted by The Toronto-Dominion Bank in London, Ontario, as its reference rate of interest for determining rates of interest chargeable in London on Canadian dollar amounts [to its most credit worthy commercial customers];

“Progress Building” means the building shown and identified on the plan attached as Schedule C as the Progress Building, including all fixtures, equipment and other improvements made to or erected in such building from time to time;

“Project” means the Lands and Buildings;

“Sportplex” means the building shown and identified on the plan attached as Schedule C as the Sportplex, including all fixtures, equipment and other improvements made to or erected in such building from time to time;

“Term” means the term of this Lease as established in Section 3.02 hereof;

“Tenant’s Interests” mean the percentage ownership interests of the Tenant in the various parts of the Project from time to time;

“WF-Building” means a building owned 100% by the Association in accordance with Section 2.03;

“WF-Lands” shall have the meaning ascribed to it in the recitals.

1.02 Interpretation

This Lease shall be interpreted in accordance with the following provisions:

- (a) The headings of Articles and Sections are for convenience of reference only and in no way define, limit, enlarge or affect the scope of or intent of this Lease or its interpretation.
- (b) This Lease shall be governed by the laws of the Province of Ontario as an Ontario contract.
- (c) All of the provisions of this Lease shall be construed as covenants as though the words importing such covenants were used in each separate provision hereof.
- (d) Each provision or covenant of this Lease shall be deemed to be severable and shall not affect the validity of any other provision, except where the provision or covenant is expressed to be a condition.
- (e) This Lease sets forth all of the covenants, promises, agreements, conditions, terms, understandings, and arrangements concerning all matters that relate or pertain to the relationship between the Landlord and the Tenant, and their respective rights and corresponding obligations to one another relating to the Lands. As such, this Lease constitutes the entire agreement between the parties

and there are no other documents, instruments, or agreements, nor any other covenants, promises, conditions, terms, understandings, and/or arrangements, either oral or written, between the Landlord and the Tenant concerning the Lands.

- (f) No supplement, modification or waiver of or under this Lease shall be binding unless executed in writing by the party to be bound thereby, and no waiver by a party of any provision of this Lease shall be deemed or shall constitute a waiver by such party of any other provision or a continuing waiver unless otherwise expressly provided.
- (g) All the terms and provisions of this Lease shall be binding upon the parties and their respective successors and assigns (but this shall not permit or imply any permission enabling any party to assign its rights under this Lease except pursuant to the express provisions of this Lease).
- (h) All references in this Lease to dollar amounts shall be deemed to be a reference to such amounts expressed in Canadian dollars.
- (i) In this Lease the singular or masculine includes the plural or feminine or body corporate or politic wherever the context or the parties hereto so require.

1.03 Schedules

The Schedules to this Lease comprise part hereof, and are identified as follows:

Schedule A	-	Description of the C-WF Lands
Schedule B	-	Description of the WF-Lands
Schedule C	-	Plan illustrating the Buildings located on the Lands as at the Commencement Date
Schedule D	-	Percentage ownership of the City and the Association in the Lands and Buildings as at the Commencement Date

1.04 Approvals

Whenever the provisions of this Lease require an approval or consent of, or to, any action, person, firm or corporation, unless this Lease expressly states to the contrary, the following rules shall apply:

- (a) such approval or consent shall be in writing;
- (b) such approval or consent shall not be unreasonably withheld or delayed;
- (c) the party whose approval or consent is required shall, within sixty (60) days after the request for approval or consent is received, advise the party requesting such approval or consent in writing that it consents or approves, or that it wishes to withhold its consent or approval in which case such party shall set forth, in reasonable detail, its reasons for withholding its consent or approval;
- (d) if the party whose approval or consent is required does not advise the other party of its consent or approval or that it is withholding such consent or approval within sixty (60) days after the request for consent or approval is received in accordance with paragraph (c) above, the party whose consent or approval has been requested shall be conclusively deemed to have given its consent or approval in writing; and
- (e) any dispute as to whether or not such consent or approval has been unreasonably withheld shall be resolved in accordance with Article 20.

1.05 Acknowledgement

It is acknowledged by the Landlord and Tenant that the Tenant has under the Original Lease leased and occupied the Buildings and the C-WF Lands and will continue to lease and occupy the Buildings and the C-WF Lands from the Commencement Date.

1.06 Replacement of Original Lease

Upon execution and delivery of this Lease by the Landlord and the Tenant, this Lease shall replace the Original Lease effective as of the Commencement Date.

**ARTICLE 2
CONFIRMATION OF OWNERSHIP INTERESTS**

2.01 Ownership of the Lands

It is agreed that the percentage ownership of the Lands is as follows:

C-WF Lands

With respect to the ownership of the C-WF Lands, each of the City and the Association owns an undivided 50% interest as tenants in common.

WF-Lands

With respect to the ownership of the WF-Lands, the Association owns a 100% interest in the WF-Lands.

2.02 Future Lands

If additional lands adjacent to or in the vicinity of the Lands are acquired by the Tenant in the future, the Tenant shall own such lands. If in the future additional lands are acquired by the Landlord and the Tenant adjacent to or in the vicinity of the Lands, the Landlord and the Tenant shall agree on the percentage ownership of the acquired lands; failing agreement, the percentage ownership shall be determined based on the contribution of the Landlord and the Tenant to the cost of acquisition of such lands.

2.03 Ownership of the Buildings

The percentage ownership interest of the City and the Association in and to the Buildings as at the Commencement Date as illustrated on the plan attached as Schedule C, is as set forth in Schedule D attached.

2.04 New Buildings

If a New Building is constructed by the Tenant in the future, the Tenant shall have a 100% legal and beneficial ownership interest in such New Building. If a New Building is constructed by the Landlord and the Tenant, then the Landlord and Tenant shall agree on the percentage ownership of such New Building; failing agreement, the percentage ownership shall be determined based on the contribution of the Landlord and the Tenant to the costs of constructing such New Building.

2.05 Reference Plan

It is agreed that a reference plan describing the C-WF Lands and the WF-Lands shall be prepared and registered in the applicable Land Registry Office and the costs of preparation and registration of such plans shall be borne equally by the Landlord and the Tenant.

2.06 Registration of Lease

It is agreed that a notice of this Lease shall be registered on title to the Lands. It is further acknowledged, confirmed and agreed that the provisions of this Lease shall be deemed and construed to run with the title to the Lands.

2.07 Road Widening Dedication and Temporary Working Easements

The Association acknowledges that the City will require from the Association a dedication of lands and or temporary working easements for the purposes of widening King Street, Ontario Street and Dundas Street abutting the C-WF and WF-Lands. Upon no less than one hundred eighty (180) days written notice given by the City to the Association stating that the City requires such dedication and or temporary working easements, the Association shall, without cost to the City, convey or transfer to the City by registerable instrument, title to the lands,

required for the dedication and or temporary working easements, free from any encumbrance, restriction, condition, right-of-way or easement whatsoever, except as may be acceptable to the City. For the purposes of this Section widening includes construction of sidewalks, curbs, gutters, boulevards, road base, street lights, laying of asphalt, installation of utilities and the construction of any and all infrastructure required for the purposes of a public transit system, including without limitation a rail or bus system. Notwithstanding the foregoing, the City may take the dedication and or temporary working easements as herein provided by stages, as it may require, for the construction and installation of the works for the widening. For the purposes of facilitating any conveyance or transfer of the lands, the City agrees to provide at its expense a reference plan describing the land to be conveyed or transferred to the City under this Section.

ARTICLE 3 DEMISE, TERM AND POSSESSION

3.01 Demise

In consideration of the rents, covenants and agreements contained in this Lease, the Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord, the Landlord's interest in the Project and the Landlord agrees that the Tenant shall have an unencumbered and exclusive use of the Project throughout the Term.

3.02 Term

- (a) This Lease shall be for a term of twenty-five (25) years from and including the 1st day of January, 2016 (the "**Commencement Date**") to and including the 31st day of December, 2040 (the "**Term**") unless sooner terminated pursuant to an express provision hereof. Each year of the Term shall commence as of January 1st and end on December 31st in the same year.
- (b) Provided that the Tenant is not in default of any provision under this Lease, the Tenant shall have the right to request an extension of the Term for two (2) further terms of ten (10) years each, provided that such extension shall be in writing and delivered to the Landlord at least twelve (12) months prior to the commencement of the extension being requested.

3.03 Covered by Lease

For clarification, the Landlord's Interest being leased to the Tenant under this Lease consists of the Landlord's 50% interest in the C-WF Lands and the Landlord's percentage ownership in the Buildings as described in Schedule D. No lands purchased or acquired by the Landlord or the Tenant whether prior to or after the Commencement Date shall be included in or covered by this Lease unless the Landlord and the Tenant specifically agree to such inclusion.

3.04 Queen's Park Public Park Lands

The Tenant acknowledges and agrees that the area of the Lands fronting on the south side of Dundas Street and lying north of the Progress Building and forming the area known as Queen's Park shall be held for use by the general public for a public park and recreational purposes in accordance with the Queen's Park Master Plan developed jointly by the parties and dated January, 2009. The Tenant further agrees that it shall, at its cost, maintain the area, including landscape maintenance and maintenance of the infrastructure including without limitation, electrical lines and pedestals, water lines and spigots, pedestrian lighting, sanitary lines and the Tenant's gateways. The Tenant shall be permitted exclusive use of Queen's Park only during the annual Western Fair and thereafter, any exclusive use would require approval of the Landlord through the City's special event policies applicable from time to time.

ARTICLE 4 CONSTRUCTION, COMPLETION OR DEMOLITION OF THE BUILDINGS

4.01 Construction

- (a) The Tenant may in its sole cost and at its sole discretion, but subject to and in compliance with this Section, Article 10 and any other provision of this Lease construct any New Buildings on the Lands. Any such construction shall be conducted diligently and be completed in compliance with all applicable statutes, regulations, by-laws and rules. Prior to commencing any such construction the Tenant shall:

- (i) consult with the Landlord, allow the Landlord a reasonable opportunity to consider and then provide its comments on the proposed construction to the Tenant and give reasonable consideration to the Landlord's comments; and
- (ii) obtain all of the requisite approvals or permits for the construction.

Demolition

- (b) The Tenant may at its sole cost and at its sole discretion, but subject to and in compliance with this Lease, demolish or remove any New Building or WF-Buildings. Any such demolition or removal shall be conducted diligently and be completed in compliance with all applicable statutes, regulations, by-laws and rules. Prior to commencing any such demolition or removal the Tenant shall:
 - (i) consult with the Landlord, allow the Landlord a reasonable opportunity to consider and then provide its comments on the proposed demolition or removal to the Tenant and give reasonable consideration to the Landlord's comments; and
 - (ii) obtain all of the requisite approvals or permits for the demolition or removal.

- (c) The Tenant may at its sole cost and at its sole discretion, but subject to and in compliance with this Lease, demolish or remove any C-WF Buildings. Any such demolition or removal shall be conducted diligently and be completed in compliance with all applicable statutes, regulations, by-laws and rules. Prior to commencing any such demolition or removal the Tenant shall:
 - (i) obtain the written consent of the Landlord, which consent, save and except for the Arts Building, shall not be unreasonably withheld; and
 - (ii) obtain all of the requisite approvals or permits for the demolition or removal.

- (d) The Tenant shall at its sole cost be responsible for securing all by-law amendments, official plan amendments and any other permits or approvals necessary for the construction of any New Buildings or for the demolition of any Building, as the case may be. The Landlord shall co-operate with the Tenant and execute in its capacity as the Landlord only any application documentation or other instruments the Tenant is required to file or submit in order to receive the necessary permits or approvals.

**ARTICLE 5
RENT**

5.01 Base Rent

The Tenant shall pay to the Landlord as Base Rent, with one half of the Base Rent being paid on the 1st day of July and the remaining one half of the Base Rent being paid on the 1st day of December during each Lease Year of the Term, as follows:

- (a) The amount of \$585,000.00 for the Lease Year of the Term commencing January 1, 2016 and ending December 31, 2016.
- (b) The Base Rent for each Lease Year of the Term commencing January 1, 2017 and ending December 31, 2020 shall be adjusted annually to an amount equivalent to the lesser of 3% or the annual Base Rent paid for the last Lease Year of the Term immediately prior to the next or following Lease Year of the Term under this Lease, multiplied by a fraction, the numerator of which is CPI for the last month of the Term immediately prior to the commencement of the month for the next or following Lease Year of the Term and the denominator of which is the CPI for the first month of the immediately prior Lease Year of the Term.

The Landlord shall determine from the appropriate website for the Bank of Canada (or successor, if applicable) any changes in annual Base Rent for the specific Lease Year of the Term as a result of changes in CPI and advise the Tenant of such determination (along with a copy of the applicable page from the website) and, upon delivery of such determination and upon expiry of a period of ten (10) business days for the Tenant to review same, then in the absence of a manifest

error, annual Base Rent for the applicable Lease Year of the Term shall be adjusted to the new annual Base Rent.

- (c) At least six (6) months prior to December 31, 2020 and December 31, 2030, and provided this Lease is renewed pursuant to section 3.02, December 31, 2040 and December 31, 2050 as the case may be, the Landlord and the Tenant agree to review the formula for and calculation of the Base Rent during the next ten (10) year period for the purpose of determining the Base Rent for the ensuing ten (10) year period. The Base Rent for each ten (10) year period shall reflect a fair market return on the Lands based on applying a market supported rate of return to the "fair market value" of the Lands in their highest and best use without taking into account any improvements thereon, including the Buildings and assuming the Lands are not encumbered by this Lease, as agreed to by the Landlord and the Tenant. The Landlord and the Tenant shall use best efforts to establish the Base Rent for a particular ten (10) year period at least one hundred and eighty (180) days prior to the commencement of each ten (10) year period, failing which, the Base Rent for the following ten (10) year period shall be the Base Rent for the preceding ten (10) year period until the new Base Rent has been established for the particular ten (10) year period, at which time an appropriate adjustment shall be made. The Landlord and the Tenant acknowledge and agree the formula and calculation for any escalation of the Base Rent may differ from the previous five (5) or ten (10) year period, as the case may be. The Landlord and the Tenant acknowledge and agree that the financial ability of the Tenant to operate its business from the Lands on an economically viable basis may also be considered in establishing the Base Rent for a particular ten (10) year period. If the Landlord and the Tenant have not agreed to the Base Rent for a particular ten (10) year period at least ninety (90) days prior to the commencement of a particular ten (10) year period (or as otherwise agreed to by the Landlord and the Tenant) the Base Rent for a particular ten (10) year period shall be determined in accordance with the arbitration procedures set forth in Article 20.

For clarification, the term Lands shall have the meaning ascribed to it in Section 1.01 and shall mean the C-WF Lands and the WF-Lands and such other lands which may be purchased by the Association after the Commencement Date.

5.02 Additional Rent

All payments required to be made by the Tenant pursuant to the provisions of this Lease in addition to the Base Rent shall be deemed to be Additional Rent and failure to make any such payments shall give the Landlord all of the same remedies as if there was a failure to pay Base Rent.

ARTICLE 6 ADDITIONAL RENT

6.01 Net Rent to Landlord

- (a) This Lease shall be a completely carefree net lease for the Landlord, and the Landlord shall not be responsible during the Term for any costs, charges, expenses or outlays of any nature whatsoever in respect of the Project (except for any fees, including legal fees required to complete this Lease, or as otherwise expressly provided for herein and except for the internal costs relating to the consideration of approvals and consents required by the Lease), and accordingly all costs, expenses, payments and outlays applicable to the Project (except as specifically noted herein) shall be payable by the Tenant.
- (b) In addition to the above provision, it is also expressly understood and agreed that the Landlord shall not be responsible for any costs relating to the operation or administration of the Project located thereon, nor any costs pertaining to the use, maintenance, repair, alteration, addition, renovation, demolition and/or improvement to the Project located thereon, nor any installations, services, finishes, equipment, fixtures, appurtenances, amenities and/or assets of the Project, nor any amounts payable in connection with (or otherwise pertaining or related to) the use, occupancy, contents or businesses carried on from time to time within the confines of the Project including, without limitation, all charges, impositions, expenses, insurance premiums and realty taxes, if any, related to the Project throughout the duration of the Term.

6.02 Payment of Realty Taxes by Tenant

In the event there is a change in the present legislation such that the Tenant is required to pay real property taxes, then the Tenant, during the Term, will pay and discharge as and when the same becomes due and payable any real property taxes, as well as any rates, levies, duties and assessments, general and special, ordinary or extraordinary, of every nature and kind whatsoever, including local improvement taxes, which shall during the Term be levied, assessed or imposed by any competent authority upon the Project, or upon the business carried on by the Tenant upon the Lands, or upon the Landlord on account thereof.

6.03 No Change in Tax Structure

It is acknowledged and agreed that at the Commencement Date the Tenant is exempt from the payment of real property taxes pursuant to section 3(1) 14 of the *Assessment Act*, R.S.O. 1990 c.A.31. In the event there is an amendment to the legislation which requires the Association to pay real property taxes while the Association is the Tenant under this Lease and operating its business on the Lands, the Landlord agrees to review the amount of Base Rent being paid by the Tenant taking into consideration the financial viability of the Tenant and its ability to operate its business from the Lands on an economically viable basis. For clarity, a review or reduction of the Base Rent under this Section will be afforded only to the Association.

6.04 Payment of Utilities by the Tenant

The Tenant shall, during the Term, pay and discharge when the same becomes due and payable, all rates and charges with respect to the installation and provision of all public and private utility services to the Lands and/or Buildings, including, without limitation, and if applicable, the provision of hydroelectric power, gas, fuel oil, water, sewer, cable or satellite television and telephone services. The Tenant shall pay for, and will maintain in good condition, any equipment installed by the Tenant, or on its behalf, which is to be used in connection with the utility services referred to herein, and shall indemnify the Landlord for any liability or damage pertaining thereto.

**ARTICLE 7
COMPLIANCE WITH LAWS AND AGREEMENTS**

7.01 The Tenant Shall Comply With Laws

The Tenant covenants that it shall, at its own expense and at all times, comply with all applicable provisions of law, if any, including without limitation, federal and provincial enactments, building by-laws, fire codes and any other governmental or municipal regulations and the requirements of the insurance underwriters, relating to the Buildings and the construction of New Buildings and to the making of any repairs, replacements, alterations, additions, changes or substitutes to or of the Project and/or Buildings, and to the use of same.

**ARTICLE 8
INSURANCE**

8.01 Insurance on Buildings

- (a) The Tenant shall insure and keep insured the Buildings on an "all risks" basis (including debris removal and demolition and "by-law insurance") and such policies shall be written on a Replacement Cost basis and include loss or damage caused by earthquake or flood provided such coverage is available at reasonable rates.
- (b) The Tenant shall also obtain such other insurance coverage as may become available and which in the reasonable opinion of the Landlord offers prudent protection for the Buildings having regard for its costs.

8.02 Builder's Risk Insurance

At all times during the construction of any New Building (and any replacements thereto), the Tenant shall provide, or arrange for, an "all risks" builders risk policy on a Replacement Cost basis. Such policy shall name the Landlord as a named insured.

8.03 **Waiver of Subrogation and Cross Liability**

Every policy of insurance maintained under Article 8 shall provide cross liability insurance and waiver of subrogation with respect to the Landlord and its officers, directors and employees.

If the Landlord takes out and maintains insurance in respect to the Project, the Landlord shall provide cross liability insurance and waiver of subrogation with respect to the Tenant and its officers, directors and employees.

8.04 **General Liability Insurance**

The Tenant shall obtain and maintain during the Term comprehensive general liability insurance against claims for personal injury, death or property damage or loss arising out of all operations of the Tenant indemnifying and protecting the Landlord and the Tenant, in an amount not less than \$10,000,000, in respect of any one accident or occurrence, and, if required, to be adjusted not more than once every two (2) years to an amount acceptable to the Landlord, acting reasonably for which a prudent tenant would insure in the circumstances. In addition, the general liability insurance shall be primary and non-contributory and shall include a severability of interest clause and a cross-liability clause.

8.05 **General Provisions Respecting Insurance**

- (a) All policies of insurance taken out in accordance with this Article 8 shall be issued in the name of the Tenant.
- (b) In this Article 8 "Replacement Cost" means the cost of repairing, replacing, rebuilding and restoring the Buildings or reinstating any items of property with materials of like kind and quality on the Lands without deduction for any other depreciation.
- (c) All such insurance shall be on terms and for amounts from time to time herein specified or from time to time specified by the Tenant and approved by the Landlord and shall be placed with insurers selected by the Tenant and approved by the Landlord provided that the Landlord shall give notice of any objections to the said terms, amounts or insurers within thirty (30) days of receipt of notice of the same from the Tenant, and failing such notice of objection, the terms, amounts or insurers in question shall be deemed to have been approved by the Landlord.
- (d) The Tenant shall duly and punctually pay all premiums and other sums of money payable for maintaining any of such insurance.
- (e) The Tenant will produce to the Landlord upon written request evidence of payment of all premiums and other sums of money payable for maintaining such insurance, and at the request of the Landlord, provide the Landlord with certificates confirming the existence of such insurance in a form satisfactory to the Landlord, acting reasonably.

8.06 **Insurance Proceeds**

Subject to any requirements of Article 14 hereof, the proceeds of all policies of insurance under Sections 8.01 and 8.02 shall be applied to repair damage with respect to which such proceeds are paid. The Landlord and the Tenant agree that the proceeds resulting from damage shall be made available to repair the damage to which such insurance proceeds are payable.

8.07 **Landlord May Insure**

If the Tenant fails to obtain the policies of insurance hereunder, the Landlord may itself obtain such policies and shall give the Tenant a notice setting out with reasonable particularity the default remedied and the amount and dates of payment of all costs and expenses incurred by the Landlord in connection therewith to the date of such notice. The Tenant covenants thereafter to pay the same to the Landlord together with interest at the Prime Rate plus 3% per annum, compounded half-yearly, calculated on the various amounts from the respective dates of payment thereof by the Landlord to the date of payment thereof by the Tenant to the Landlord, failing which payment of the amount thereof, together with interest as provided herein, shall be recoverable by the Landlord as Additional Rent in arrears under this Lease.

8.08 **Release**

The Tenant hereby waives, releases and discharges the Landlord from all rights, claims, and demands whatsoever which the Tenant might have or acquire against the Landlord arising out of damage to or destruction of a Building located on the Lands or any part thereof, occasioned by any of the perils insured against by the Tenant or which the Tenant has agreed to insure against, unless such rights, claims and demands shall arise by reason of the willful misconduct, negligence or other tortious act or omission of the Landlord or its servants, agents, contractors or those for whom it is responsible at law and the Tenant agrees to look solely to its insurer or insurers in the event of such loss whether or not the insurance coverage is sufficient to fully reimburse the Tenant for such loss. It is understood and agreed that the aforementioned waiver, release and discharge shall not apply to any rights, claims or demands which the Tenant may have against any party other than the Landlord.

**ARTICLE 9
REPAIR**

9.01 **Tenant to Repair**

Throughout the Term the Tenant covenants at its own cost and expense to keep the Buildings and all appurtenances thereto in such good order, condition and repair (reasonable wear and tear excepted) as would a careful and prudent owner, and in compliance with the standards and requirements of any governmental agency or licence authority having jurisdiction over the Lands or the business carried on upon the Lands; and for such purposes but without limiting the foregoing covenant of the Tenant, the Tenant at its own cost and expense shall, throughout the Term, keep in good order and condition, or cause to be kept in good order and condition the Buildings, and properly make, or cause to be made, all needed repairs, replacements, alterations, additions, changes, substitutions and improvements, structural or otherwise, thereto, both inside and outside, including, but not limited to fixtures, walls, foundations, footings, pilings (if any), the roof, elevators, escalators, hoists, lifts, parking areas and similar devices (if any), heating, ventilating and air-conditioning equipment, fire suppression systems, electronic safety and security systems, sidewalks, yards and other like areas, water, gas, and sewer pipes, connections, water steam, gas and electric pipes and conduits, parking, loading and delivery facilities and all other fixtures in and appurtenances to the Buildings whether or not enumerated herein, taking into consideration at all times the age and construction of the Buildings and parking areas. Such repairs shall in all respects meet the lawful requirements of municipal or other governmental authorities.

9.02 **Inspection**

The Landlord, upon no less than twenty-four (24) hours written notice to the Tenant, shall, subject to the rights of any occupants, have the right to enter and view the Buildings and notify the Tenant of any structural defects or violations of any municipal or governmental by-law, statute or regulation. The Landlord and Tenant agree that the right to inspect pursuant to this Section is in addition to any rights, duties and obligations of the Landlord under the *Municipal Act, 2001*, as amended, the City's by-laws, or any other municipal or governmental by-law, statute or regulation. Upon written notification from the Landlord of any structural defect or violation of any municipal or governmental by-law, statute or regulation, the Tenant agrees to promptly rectify such defect or violation, failing which the Landlord shall have the right to repair the structural defect or rectify the violation and submit the invoice for the work to the Tenant who agrees to pay same within ten (10) days of receiving such invoice. The Tenant covenants with the Landlord where an Emergency or imminent Emergency exists in the opinion of the Landlord, but subject to the rights at law of the occupants, to permit the Landlord to enter and view the Project without notice and with a representative of the Tenant present if reasonably feasible under the circumstances, and the Landlord shall have the right to but shall not be obligated to rectify the Emergency.

**ARTICLE 10
ALTERATIONS**

10.01 **Change - defined**

For the purpose of this Lease, the term "Change" shall be limited to:

- (a) any structural alteration, addition, or improvement to an existing Building which, for greater certainty, excludes any alterations, additions or improvements of a non-structural nature or the relocation of non-load-bearing walls; or

- (b) the demolition or partial demolition of a Building, or any part thereof except as incidental to any alteration, addition, improvement or other change permitted under Subsection 10.01(a) or other provisions of this Lease; or
- (c) any alteration, addition, change or improvement (other than minor changes in details) which affects or relates to the exterior of a Building including the roof and signage which is visible from outside the Building; or
- (d) any significant alteration, addition, change or improvement to the landscape treatment of the Lands.

10.02 Change

- (a) The Tenant may at its sole cost and at its sole discretion, but subject to and in compliance with this Lease, make any alteration, addition or improvement to the Project that is not a Change without obtaining the prior written consent of the Landlord.
- (b) The Tenant may at its sole cost and at its sole discretion, but subject to and in compliance with this Lease make a Change to a New or WF-Building. Any such Change shall be conducted diligently and be completed in compliance with all applicable statutes, regulations, by-laws and rules. Prior to commencing any such construction the Tenant shall:
 - (i) consult with the Landlord, allow the Landlord a reasonable opportunity to consider and then provide its comments on the proposed Change to the Tenant and give reasonable consideration to the Landlord's comments; and
 - (ii) obtain all of the requisite approvals or permits for the Change.
- (c) The Tenant may at its sole cost and at its sole discretion, but subject to and in compliance with this Lease make a Change to a C-WF-Building. Any such Change shall be conducted diligently and be completed in compliance with all applicable statutes, regulations, by-laws and rules. Prior to commencing any such construction the Tenant shall:
 - (i) obtain the written consent of the Landlord, which consent, save and except for the Arts Building, shall not be unreasonably withheld; and
 - (ii) obtain all of the requisite approvals or permits for the Change.

10.03 Change Requirements

The Tenant agrees that any Change shall meet the requirements of the municipal, provincial and federal governments or other competent authorities having jurisdiction therein. The Tenant shall at its sole cost be responsible for securing all by-law amendments, official plan amendments and any other permits or approvals necessary for the construction of any New Building or for the demolition of any Building, as the case may be. The Landlord shall co-operate with the Tenant and execute in its capacity as the Landlord only any application documentation or other instruments the Tenant is required to file or submit in order to receive the necessary permits or approvals.

10.04 Commencement and Completion

Once the Tenant has commenced any work upon the Project, the Tenant shall proceed diligently and continuously to completion and shall do all such work in a good and workmanlike manner, using first class materials, so that, once the work is completed, the Building, as altered or added to, is of a type, character, quality, construction and design which is equal to or better than any existing Building before such alterations or additions were commenced.

10.05 Insurance

Before commencing any Change, the Tenant shall obtain at its own expense a builder's all risk policy, including the coverages set out in Article 8, and including comprehensive general liability coverage of the Landlord and the Tenant as joint insureds, up to \$10,000,000 or any greater amount reasonably requested by the Landlord from any and all claims for damage or

injury to persons or property or for loss of life arising out of such alterations, additions, changes, improvements or construction and from and against the cost of defending any action upon any such claims. The Landlord shall consider any request by the Tenant for a reduction in the maximum amount of insurance, where any Change is of a nature that does not require insurance in the amounts set out above. The Landlord shall act reasonably and promptly in considering any such request.

10.06 Workers' Compensation

The Tenant, at its own expense, shall also procure and carry or cause to be procured and carried and paid for, full workers' compensation coverage in respect of all workers, employees, servants and others engaged in or upon such work and shall pay all workers' compensation assessments when due.

**ARTICLE 11
MAJOR CHANGES TO BUILDINGS – ADJUSTMENT TO OWNERSHIP INTERESTS**

11.01 Major Change – Defined

For the purposes of this section "Major Change" means a major renovation to a C-WF Building which will significantly change or alter the use, foot print and/or floor area of the building. For clarity, a major change shall not include changes or works required to be completed by the Tenant from time to time under Article 9.

11.02 Adjustment to Ownership Interest

The Landlord and Tenant agree that if the Tenant makes a Major Change to a C-WF Building and provided that the Tenant has complied with all of its obligations under this Lease, the percentage ownership of the C-WF Building that has undergone the Major Change shall be adjusted in accordance with the following formula:

- (a) Fair market value of the C-WF Building involving the Major Change shall be determined prior to beginning the Major Change in accordance with the provisions of Section 19.01.
- (b) Each of the Tenant and the Landlord shall have a base cost of the Building prior to the commencement of the Major Change equivalent to the current percentage ownership in the Building multiplied by the fair market value of the Building determined under paragraph (a).
- (c) Upon completion of the Major Change the Tenant shall provide to the Landlord details of the actual costs of the Major Change.
- (d) The percentage of ownership of the C-WF Building shall be adjusted by adding the Landlord's contribution to actual costs of the Major Change to its initial base cost of the C-WF Building, resulting in the new percentage ownership.

For illustration purposes, the following sets forth the workings of this section based on the stated assumptions:

Assumptions:

Fair market value of Building	–	\$5,000,000
Percentage ownership Building	–	50% Landlord
	–	50% Tenant
Actual costs of major change	–	\$15,000,000

Calculation of new percentage ownership in the Building

	<u>Base</u> <u>Cost of</u> <u>Building</u>	<u>Actual cost of</u> <u>major change</u>	<u>deemed total</u> <u>cost of</u> <u>Building</u>	<u>new</u> <u>percentage</u> <u>ownership in</u> <u>Building</u>
<u>Entity</u> <u>Landlord</u>	<u>\$2,500,000</u>	<u>\$0.00</u>	<u>\$2,500,000</u>	<u>12.5%</u>
<u>Tenant</u>	<u>\$2,500,000</u>	<u>\$15,000,000</u>	<u>\$17,500,000</u>	<u>87.5%</u>

**ARTICLE 12
GENERAL COVENANTS OF THE LANDLORD**

12.01 Quiet Possession

The Landlord hereby covenants with the Tenant that provided the Tenant pays the Base Rent and Additional Rent hereby reserved and performs the covenants herein on the Tenant's part contained, the Tenant shall and may peacefully possess and enjoy the Landlord's undivided interest in the Landlord's Interests for the Term, without any interruption or disturbance from the Landlord, or any other person or persons lawfully claiming by, from or under the Landlord, except as provided in this Lease.

12.02 Representations and Warranties

The Landlord hereby represents and warrants that it will provide the Tenant with a by-law authorizing the execution of this Lease.

12.03 Amendment to Lease

To the extent the Tenant requires an amendment to the Lease in order to satisfy the requirements of a Leasehold Mortgagee, the Landlord agrees to deal with such request in a timely and reasonable manner.

**ARTICLE 13
GENERAL COVENANTS OF THE TENANT**

13.01 Base and Additional Rent

The Tenant shall pay Base Rent as set forth in Section 5.01 and Additional Rent as provided for in this Lease.

13.02 Construction Liens

- (a) The Tenant shall not permit any construction liens to be, or to remain registered against the title to the Project by any of its contractors or subcontractors, and will take all steps necessary to cause such liens to be discharged or vacated, as the case may be, within thirty (30) days of receiving notice that such liens have been registered provided that the foregoing shall not prevent the Tenant from contesting such construction liens.
- (b) The Tenant agrees to indemnify and save harmless the Landlord from any claims, liabilities, damages or expenses incurred by the Landlord as a result of construction liens registered against the title to the Lands or the Buildings by or on behalf of any contractor, subcontractor, suppliers or workmen of the Tenant.

13.03 Waste

The Tenant shall not permit any waste or injury to the Lands and shall not use or occupy, or permit to be used or occupied the Lands for any illegal or unlawful purpose, provided that leasehold improvements undertaken by, or on behalf of subtenants or reconstruction following damage or construction in accordance with the original plans or alterations specifically permitted hereunder shall not be considered waste to the Lands.

13.04 Use

Subject to compliance with Section 7.01, the Tenant covenants that it will use the Project for those purposes as set out in the objects of the Tenant contained in its charter as of the Commencement Date.

13.05 Nuisance

The Tenant shall not do, nor omit, nor permit to be done or omitted, upon the Lands anything which shall be, or result in a nuisance and where some act or omission occurs which was not in the control of the Tenant, the Tenant shall take such reasonable action as may be requisite in the circumstances to remove the nuisance.

13.06 **Licences**

The Tenant shall do all such acts and pay all such fees and levies as may be appropriate or required, acting reasonably, throughout the Term in order to maintain the Licences in good standing so long as the same are required for the operation of any businesses carried on by the Tenant or any sub-tenant.

13.07 **Observe and Perform**

The Tenant shall observe and perform all of the covenants and obligations of the Tenant herein contained.

13.08 **Heating and Snow Removal**

The Tenant hereby assumes the full and sole responsibility for heating, air conditioning, ventilating and any other systems servicing the Buildings and for the removal of snow from the walks, walkways, parking lots and driveways on the Lands.

13.09 **Maintenance**

The Tenant shall be responsible for all landscape maintenance and maintenance to the parking lots and driveways on or servicing the Lands.

13.10 **Reporting**

The Tenant shall report on a regular basis and at least once annually to the Lease Oversight Committee with respect to its use and plans for the Project and provide the Lease Oversight Committee at least once annually with its master plan for the Project identifying short and long term plans for the Project.

ARTICLE 14
DAMAGE AND DESTRUCTION

14.01 **Partial Damage**

If any Buildings, or any part thereof, are at any time destroyed or damaged by an insurable peril and if, as a result of such occurrence, the Buildings, or any part thereof, are rendered untenable only in part, and the business of the Tenant has not been materially affected, this Lease shall continue in full force and effect and the Tenant shall commence diligently to reconstruct, rebuild or repair the damage and this Lease shall remain in full force and effect without any abatement in Base Rent.

14.02 **Substantial Damage**

Notwithstanding anything contained in Section 14.01, if any Buildings are at any time destroyed or damaged, such that the Tenant's business has been materially adversely affected, then the Tenant, upon notice to the Landlord given within one hundred and twenty (120) days of the occurrence of such damage or destruction, shall elect one of the following options:

- (a) The Tenant may elect to use all insurance proceeds to reconstruct, rebuild or repair the Building or Buildings and make any alterations, additions or improvements thereto. If the Tenant elects this option, the Tenant shall commence diligently to reconstruct, rebuild or repair the Building or Buildings. If such damage or destruction is such that the Tenant is unable to continue business from the Building or Buildings or is only able to use a part of the Building or Buildings, then the Landlord, acting reasonably, agrees to consider a reduction in the Base Rent in the event the damage causes a material reduction in the revenues received by the Tenant from such Buildings.
- (b) The Tenant may elect not to reconstruct, rebuild or repair the damage to the Building or Buildings and in this event the Landlord and Tenant shall take or cause to be taken the appropriate steps to claim under the insurance policies and the proceeds received under the insurance policies shall be distributed to the parties as follows:
 - (i) to the extent the insurance proceeds relate to any personal property or equipment of the Tenant, to the Tenant; and,

- (ii) to the extent the insurance proceeds relate to the Building or Buildings, such insurance proceeds shall be paid to the Tenant and the Landlord, in accordance with their respective interests in the damaged or destroyed Building or Buildings.
- (c) The Tenant may elect not to reconstruct, rebuild or repair the damage to the Building or Buildings, but to utilize the insurance proceeds arising from such damage to construct a new Building or Buildings at a new or the same location (the “**New or Same Location**”) on the Lands or construct an expansion to any existing Building on the Lands (“**Expanded Existing Facilities**”).

If the Tenant elects this option, the Tenant shall have the right to use its insurance proceeds to be applied towards the construction of a New Building or the construction of an expansion to an existing Building to be located at the New or Same Location or to the Expanded Existing Facilities, as the case may be. In such event the Landlord shall have the right to retain any insurance proceeds it receives.

ARTICLE 15 INDEMNITY

15.01 Limitation of Liability

Unless resulting from the actual fault or negligence of the Landlord or those for whom the Landlord is in law responsible, the Tenant agrees that the Landlord shall not be liable for any bodily injury to or death of, or loss of or damage to any property belonging to, the Tenant or its employees, occupants, or others for whom the Tenant is in law responsible.

15.02 Indemnity by Tenant

The Tenant covenants with the Landlord that, except where the same arises out of the actual fault or negligence of the Landlord, or those for whom it is responsible at law, the Tenant shall indemnify and save harmless the Landlord from any and all manner of actions, suits, damages, losses, costs, claims and demands of any nature whatsoever relating to or arising during the Term out of:

- (a) any injury to a person or persons, including death, occurring in or about the Project, or
- (b) any damage to or loss of property occurring in or about the Project; or
- (c) any breach, violation or non-performance of any covenant, condition or agreement of this Lease, to be fulfilled, kept, observed and performed by the Tenant.

The obligations of the Tenant to indemnify the Landlord under the provisions of this Article 15 shall survive any termination of this Lease, anything in this Lease to the contrary notwithstanding. The Tenant shall, if the Landlord is made a party to any action, suit or proceeding, in respect of a claim to which the Tenant’s obligation to indemnify the Landlord under the provisions of this Article 15 extends, if so requested by the Landlord, defend such action, suit or proceedings in the name of the Landlord, provided that the Tenant may, in any such event, elect to pay and satisfy any such claim. The Landlord shall not settle or compromise any such claim, and in each such event the Landlord shall inform the Tenant fully of such claims and shall afford the Tenant every co-operation in the defence of such action, suit or proceeding.

15.03 Indemnity by City

The City covenants with the Tenant that, except where the same arises out of the actual fault or negligence of the Tenant, or those for whom it is responsible at law and subject to the release contained in Section 8.08, the City shall indemnify and save harmless the Tenant from any and all manner of actions, suits, damages, losses, costs, claims and demands of any nature whatsoever relating to or arising during the Term out of any breach, violation or non-performance of any covenant, condition or agreement of this Lease, to be fulfilled, kept, observed and performed by the City. The obligations of the City to indemnify the Tenant shall survive any termination of this Lease, anything in this Lease to the contrary notwithstanding.

**ARTICLE 16
ASSIGNMENT AND SUBLETTING**

16.01 No Assignment by Tenant

The Tenant shall not, by operation of law or otherwise, transfer or assign its interest in the Project or this Lease without the prior written consent of the Landlord which consent shall not be unreasonably withheld or delayed but may be subject to reasonable conditions which may include, without limitation, amendments to this Lease.

16.02 Subletting by Tenant

The Tenant may, without the consent of the Landlord, sublet, licence or grant occupancy to any part of the Project provided that any such rights shall be in compliance with the terms of this Lease and shall not extend beyond the term of this Lease.

**ARTICLE 17
TENANT FINANCING**

17.01 Tenant's Financing Requirements

The Landlord acknowledges that the Tenant may require financing from time to time to support the development and operation of the Project including the construction of New Buildings and renovation, alteration or demolition of the Buildings and that as a condition to secure such financing the Tenant may be required to assign and mortgage its interest in the Project or this Lease to an institutional lender.

17.02 Right to Mortgage

The Tenant shall not in whole or in part assign and mortgage (by way of assignment or sublease) or otherwise its interest in the C-WF Lands, C-WF Buildings and WF-Buildings or this Lease without the prior written consent of the Landlord which consent shall not be unreasonably withheld or delayed but may be subject to reasonable conditions which may include, without limitation, amendments to this Lease.

17.03 Requests for Consent

Where the Lease Oversight Committee has reviewed a request for consent under Section 17.02 and where the Lease Oversight Committee has agreed that the terms and conditions of the financing are acceptable to send to the Landlord, the Landlord agrees that it shall place the request for consent on an agenda for the City's council review and consideration within sixty (60) days of receiving the request from the Lease Oversight Committee.

**ARTICLE 18
DEFAULT**

18.01 Default

The following events shall constitute "**Events of Default**":

- (a) default by the Tenant in the payment of any instalment of Base Rent or Additional Rent, and such default continuing for thirty (30) days after the Landlord shall have given the Tenant written notice of such default by personal delivery or prepaid registered post; or
- (b) failure by the Tenant to keep, perform or observe any of the covenants, agreements, provisions, conditions or provisos contained in this Lease on the part of the Tenant to be kept, performed or observed and such failure shall have continued or shall not have been remedied within the period of forty-five (45) days next after the Landlord shall have given to the Tenant written notice of such default by personal delivery or prepaid registered post; provided, however, that if the condition complained of reasonably requires more time to cure than the said forty-five (45) day period, the Tenant shall be deemed to have complied with the remedying thereof if the Tenant shall have commenced remedying or curing the same forthwith upon receipt of such written notice from the Landlord and diligently thereafter completes the same; or
- (c) if the Project shall be abandoned; or

- (d) the Tenant making any assignment for the benefit of creditors generally or any bulk sale (except pursuant to a permitted assignment) or making an assignment in bankruptcy, or having a receiving order made against it which is not lifted within forty-five (45) days or such longer period as may be required provided the Tenant diligently commences to have same lifted, or taking the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors, or making a proposal; or
- (e) any order being made for the winding-up of the Tenant or the Tenant taking any steps or proceedings to surrender its charter.

18.02 Remedies Upon Default

- (a) The remedies of the Landlord for an Event of Default are cumulative and may be implemented independently or in conjunction with one another. Such remedies are in addition to any remedies of the Landlord at law or in equity. Such remedies include:
 - (i) injunctive relief, including mandatory injunctive relief;
 - (ii) damages, including without limitation to all expenses and costs including legal fees on a full indemnity basis incurred by the Landlord as a result of any breach by the Tenant;
 - (iii) termination of this Lease by notice, re-entry, Court order or judicial proceeding, or any other means whereby this Lease may be terminated, or any remedy analogous to termination of this Lease;
 - (iv) re-entry or possession without termination of this Lease; and
 - (v) curing of defaults of the Tenant by Landlord retaining a third party or by Landlord's own efforts, the cost of which, including all reasonable professional service fees, shall be payable by the Tenant and shall bear interest at 3% over the Prime Rate per annum on the amount outstanding until paid.
- (b) The Landlord may, at its sole option, have the right to re-enter and take possession of the Project after the Landlord has given written notice of such intention and the Tenant has been given the opportunity to cure such default in accordance with the time limits hereinbefore set out.
- (c) In the event the Landlord elects to re-enter or take possession of the Project without terminating this Lease, the Landlord shall have the option to have any sub-lease assigned to it or its designate and subject to OLG's approval, have the OLG lease assigned to it or its designate.
- (d) In addition, the Landlord may from time to time make such alterations and repairs as may be necessary in order to re-let the Project, or any part thereof, for such term or terms (which may be for a term extending beyond the Term) and at such rental rates and upon such other terms and conditions as the Landlord, in its sole discretion, may deem advisable.

18.03 Conditions to Exercising Remedies

- (a) The Landlord may exercise its remedies only after the Landlord shall have given to the Tenant, in accordance with Section 18.01, at least fifteen (15) days' written notice of default in payments of Base Rent or Additional Rent and at least forty-five (45) days' notice (or such longer period as provided in section 18.01) of other Events of Default, in each case specifying full particulars of the Event of Default.
- (b) Notwithstanding Section 18.04, the Landlord in the event of an Emergency, may, but shall not be required to, take such steps as the Landlord considers necessary to enter the Project and remedy the Event of Default giving rise to the Emergency, all at the expense (including reasonable legal fees) of the Tenant.

18.04 **Right to Cure Default**

Notwithstanding any rule of law or equity to the contrary, the Tenant shall be entitled to written notice from the Landlord and be entitled to cure any default of any kind or nature whatsoever as referred to elsewhere herein. In particular, without restricting the generality of the foregoing, if the Tenant commits any breach of this Lease by making an assignment or a sublease, mortgage or other similar transaction not permitted by the terms hereof, then the Tenant shall be considered to have cured such default if it shall procure, within forty-five (45) days of receiving notice of the breach from the Landlord, a reconveyance, reassignment, release, surrender, discharge, cessation, or other appropriate instrument, or judicial declaration, whereby any rights granted or created in breach of this Lease shall cease to exist.

18.05 **No Waiver**

No condoning, excusing or overlooking by the Landlord or the Tenant of any default, breach or non-observance by the Tenant or by the Landlord at any time in respect of any covenant or provision in this Lease shall operate as a waiver of the Landlord's or the Tenant's rights as the case may be in respect of any continuing or subsequent default, breach or non-observance or so as to defeat or affect in any way the rights of the Landlord or the Tenant in respect of any such continuing or subsequent default or breach and no waiver shall be inferred from or implied by anything done or omitted by the Landlord or the Tenant except only an express waiver in writing.

18.06 **Ability to Commit Tenant**

It is expressly agreed that, no particular occupant of the Project shall have any authority to bind the Tenant, and no act by any such person shall be considered an act of the Tenant.

ARTICLE 19
TERMINATION AND RIGHTS TO PURCHASE

19.01 **Termination**

The Landlord and the Tenant agree that upon the termination of this Lease, other than by an Event of Default, or in the event the Landlord and the Tenant have agreed not to renew this Lease upon the expiration of the Term, the following provisions shall be applicable:

- (a) The Tenant may elect, by notice to the Landlord no later than two (2) years prior to the date of termination of this Lease (the "**Tenant's Option Period**"), to purchase the Landlord's Interests at its Fair Market Value less 10% (representing that no real estate commission and no environmental warranty will be paid or given);
- (b) If the Tenant fails to provide notice to the Landlord within the Tenant's Option Period of the Tenant's desire to purchase the Landlord's Interests as provided for in Subsection 19.01(a), the Landlord may elect, by notice to the Tenant, delivered no later than one (1) year following the expiry of the Tenant's Option Period (the "**Landlord's Option Period**"), to purchase the Tenant's Interests at Fair Market Value less 10% (representing that no real estate commission and no environmental warranty will be paid or given); or,
- (c) If the Tenant fails to exercise its option under Subsection 19.01(a) to purchase the Landlord's Interests and the Landlord fails to exercise its option under Subsection 19.01(b) to purchase the Tenant's Interests, the Landlord and Tenant agree that the Project shall be actively marketed and sold in a commercially reasonable manner. The Landlord and Tenant shall cooperate in the marketing and sale of the Project and shall provide such information in its possession as may be relevant to such sale process. In addition, the Landlord and the Tenant shall appoint an agent to list the Project and otherwise to negotiate and present all offers to the Landlord and the Tenant for review.

For the purposes of this Section 19.01, "Fair Market Value" shall mean the fair market value of the percentage interest being purchased and sold in the Project, as the case may be, at a date selected by the parties and, failing agreement, on the date of exercise by the Tenant or the Landlord to purchase the Landlord's Interests or the Tenant's Interests, respectively. Such Fair Market Value in respect to the Buildings or the Lands shall be in respect to the Buildings, based upon buildings of similar age and condition within the geographic region of Southwestern Ontario, and in respect to the Lands, based upon similar lands within Southwestern Ontario, as

determined by an accredited commercial real estate appraiser jointly retained by the Landlord and the Tenant within thirty (30) days of the Tenant exercising its option to purchase the Landlord's Interests pursuant to Subsection 19.01(a) or the Landlord exercising its option to purchase the Tenant's Interests pursuant to Subsection 19.01(b). In the event the parties cannot agree upon a commercial real estate appraiser, the matter shall be determined with accordance with the arbitration procedures set forth in Article 20. The Landlord and the Tenant further agree that all fees, disbursements and other costs and expenses associated with the determination of the Fair Market Value shall be borne equally by the Landlord and the Tenant.

The closing of the purchase and sale of the Landlord's Interests under section 19.01(a) or the Tenant's Interests under section 19.01(b) shall occur within one hundred and eighty (180) days of the date that Fair Market Value of the particular interest has been determined, at which time the appropriate documents shall be signed by the appropriate parties and delivered to effectively transfer and register the transferred interest in the name of the purchaser (or as the purchaser may direct) and the sale price as determined shall be paid to the selling party.

19.02 Overholding

If the Tenant remains in occupation of the Project after the expiration of the Term, without objection by the Landlord and without written agreement to the contrary, the Tenant shall be deemed to be a tenant from month to month at the Base Rent for the last year of the Term as increased by 3% per annum and prorated monthly and all the covenants and agreements hereof shall apply to such monthly tenancy, *mutatis mutandis*.

ARTICLE 20 ARBITRATION

20.01 Lease Oversight Committee

All disputes under this Lease shall be dealt with in the first instance by the Lease Oversight Committee who shall attempt to resolve the dispute subject to any approvals that may be required from the Landlord or the Tenant.

20.02 Submission to Arbitration

Whenever the Landlord and the Tenant have been unable to resolve a dispute through the Lease Oversight Committee, in the first instance, or under this Agreement, arbitration proceedings may be commenced by the party desiring arbitration (the "**Initiating Party**") and the principals enumerated in this Article 20 shall apply. If arbitration is not applicable, either party may immediately seek recourse in such judicial tribunal or court as the circumstances may require.

20.03 Arbitration Procedure

If any dispute as to a question of fact arises between the Landlord and the Tenant, the determination of such dispute shall be referred to arbitration. The arbitration proceedings shall be commenced by the Initiating Party giving notice to the other party (hereinafter called the "**Responding Party**") specifying the matter to be arbitrated and requesting an arbitration thereof. In the event that the Initiating Party and the Responding Party are unable to agree upon a single arbitrator or an arbitration procedure within fifteen (15) days after delivery of such notice, the Initiating Party shall, by written notice to the Responding Party, designate an arbitrator. The Responding Party shall, within ten (10) days thereafter, be entitled to appoint an arbitrator by written notice to the Initiating Party, and the two arbitrators so appointed shall meet and select a third arbitrator acceptable to both. In the event that the Responding Party fails to appoint an arbitrator within the time limit aforesaid, and deliver notice thereof to the Initiating Party, then the arbitrator first appointed shall, at the request of the Initiating Party, proceed to determine the matter in dispute, as if he were a single arbitrator appointed by both the Initiating Party and the Responding Party for the purpose. If two arbitrators are appointed within the time prescribed and they do not agree within a period of ten (10) days from the time of appointment of the second arbitrator upon the appointment of a third arbitrator, then upon application of either the Initiating Party or the Responding Party, the third arbitrator shall be appointed by a Judge of the Superior Court of Ontario.

20.04 **No Appeal**

The determination made by the said arbitrators or the majority of them, or by the single arbitrator, as the case may be, shall be final and binding upon the Landlord and the Tenant.

20.05 **Qualification of Arbitrators**

The arbitrator or arbitrators selected to act hereunder shall be qualified by certificate, education and training to arbitrate the particular question in dispute.

20.06 **Hearing Procedure**

The single arbitrator or the arbitrators so chosen shall proceed immediately to hear and determine the question or questions in dispute. The decision and reasons therefor shall be made within sixty (60) days after the appointment of the single arbitrator or arbitrators and in the event a decision is not made within such time, either party may elect to terminate the arbitration. The decision and reasons therefor of the arbitrator shall be drawn up in writing and signed by the arbitrator or a majority of them and shall be final and binding upon the parties hereto as to any question or questions so submitted to arbitration and the parties shall be bound by such decision and perform the terms and conditions thereof

20.07 **Other Matters**

Each party shall pay the fees and expenses of the arbitrator appointed by it and one-half of the fees and expenses of the third arbitrator or of the sole arbitrator as the case may be.

**ARTICLE 21
LEASE OVERSIGHT COMMITTEE**

21.01 **Lease Oversight Committee Established and Purpose**

The Landlord and the Tenant agree to establish a Lease Oversight Committee the purpose of which is:

- (a) to discuss any matters arising under or related to the Lease;
- (b) in the first instance, to attempt to resolve any dispute arising under the Lease;
- (c) to consider, negotiate and recommend for approval any amendments to the Lease including without limitation the Base Rent as provided in Section 5.01;
- (d) to review any requests by the Tenant for consent or consultation where the Landlord's consent or consultation is required under the Lease;
- (e) to review plans the Tenant may have with respect to the construction, alteration, demolition, removal or change to a Building for which the Tenant is required to consult with or obtain the consent of the Landlord;
- (f) to review plans the Tenant may have with respect to changes to the Project including without limitation demolition, alteration or construction of any Buildings;;
- (g) to review plans the Tenant may have with respect to any financing it may require for the C-WF Lands, C-WF Buildings or WF-Buildings;
- (h) discuss any concerns the Tenant or the Landlord may have with respect to the administration of the Project; and
- (i) discuss any plans for potential joint projects between the Landlord and the Tenant that may be proposed for the Project.

21.02 **Limitations on the Purposes of the Lease Oversight Committee**

For the purposes of clarity, the Landlord and the Tenant agree that:

- (a) the Tenant shall have overall executive control of the operation of the Project, subject to the terms of the Lease;
- (b) the Lease Oversight Committee is not expected to become involved in the day-to-day operating decisions of the Tenant other than to be advised of matters being undertaken by the Tenant within the Project or related to the Lease;
- (c) the Lease Oversight Committee shall not have the power or authority to provide an approval or consent that may be required under the Lease;
- (d) members of the Lease Oversight Committee shall not have the power or authority to bind the Landlord or the Tenant;
- (e) members of the Lease Oversight Committee will be responsible to report back to their respective council or board;
- (f) any reports or recommendations of the Lease Oversight Committee shall not be binding on either the Landlord or the Tenant and the council of the City and the board of the WFA shall have the final determination in respect of any report or recommendation received from the Lease Oversight Committee; and
- (g) the Lease Oversight Committee is separate and distinct from the Management Committee established under the Joint Venture Agreement for the Western Fair 4-Pad Arena Complex between the City and the Association and dated September 1st, 2000. The Lease Oversight Committee shall not become involved in the decisions of the Management Committee.

21.03 Composition of Lease Oversight Committee

The Lease Oversight Committee shall be comprised of four (4) members, one-half of whom shall be appointed by the Landlord and one-half of whom shall be appointed by the Tenant. The parties expect that members of the Lease Oversight Committee will bring operational, financial, real estate or program expertise that will support the efficient and effective operation of the Lease Oversight Committee.

- (a) In the first instance, the Landlord shall appoint:
 - (i) its Managing Director, Corporate Services and City Treasurer, Chief Financial Officer or its Director, Financial Services; and
 - (ii) its Manager of Realty Services.
- (b) In the first instance, the Tenant shall appoint:
 - (i) its Chief Executive Officer; and
 - (ii) its Chief Operating Officer or its Chief Financial Officer.
- (c) The Landlord and the Tenant may appoint alternate representatives to attend meetings in the event that either of its representatives is unable to attend a scheduled meeting of the Lease Oversight Committee. Any person proposed as a replacement of a party's appointment to the Lease Oversight Committee or as an alternate representative shall require the prior approval of the other party, such approval not to be unreasonably withheld.
- (d) A party may, at any time, remove one or more of its representatives or alternates immediately upon written notice to the other party.

21.04 The Chair

The chair of the Lease Oversight Committee shall be selected annually by the members of the Committee with the position of the chair and secretary rotating annually between a member appointed by the Landlord and a member appointed by the Tenant. The chair shall not have a tie casting vote. In the absence of the chair, a member designated by the chair may act as chair of the meeting.

21.05 Deadlock

In the event that the Lease Oversight Committee is unable to reach a decision or a dispute arises with respect to any matter for which the Lease Oversight Committee has responsibility, the matter shall be referred to the dispute resolution provisions in Article 20.

21.06 **Meetings**

- (a) The Lease Oversight Committee shall meet no less than four (4) times annually on such dates and times as to be mutually agreed upon between the members on or before January 15th for meetings to be held in that year. The Lease Oversight may meet at such other dates and times as mutually agreed to by the members; at the call of the chair on not less than five (5) business days written notice to all members for the purpose stated in the notice; or at the call of two (2) members on not less than five (5) business days written notice to all members for the purpose stated in the notice.
- (b) For all meetings, an agenda shall be prepared by the chair, or in the case of a meeting called by two (2) members the members who have called the meeting, and circulated to all of the members at least five (5) business days prior to the date of the meeting. The agenda shall be accompanied by such materials as are reasonably necessary to enable members to participate in the meeting on an informed basis.
- (c) For all meetings, minutes summarizing the outcome of each meeting and confirming the next meeting date shall be prepared by the secretary and circulated to all members within five (5) business days after the meeting.
- (d) The Lease Oversight Committee may adopt such rules and procedures as it deems necessary for the conduct of its meetings provided that in the event of a conflict between any rule or procedure adopted and any provision of this Lease, the provision in this Lease shall prevail.

ARTICLE 22
GENERAL PROVISIONS

22.01 **Not Partnership or Joint Venture**

It is understood and agreed that nothing contained in this Lease nor any acts of the parties hereto shall be deemed to constitute the Landlord or the Tenant partners or joint venturers or to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.

22.02 **Notices**

Any notices required or permitted to be given in accordance with this Lease shall be in writing and shall be served either by personal delivery to the Landlord or the Tenant, or by fax or by registered mail, postage prepaid, to the following addresses:

To the Landlord: The Corporation of the City of London
300 Dufferin Avenue
P.O. Box 5035
London, ON N6A 4L9
Attention: City Clerk
Fax No.: 519-661-4892

To the Tenant: Western Fair Association
316 Rectory Street
London, ON N5W 3V9
Attention: Chief Executive Officer
Fax No. 519-438-0825

Notices given pursuant to this section shall be deemed to be received when delivered if by personal service, and on the date of transmission if by fax, and shall be deemed if sent by registered mail (except in the event of a postal interruption, in which event, such notice shall be deemed to be received when received) to be received five (5) business days after posting in Canada. Any party may at any time give notice to the other parties hereto of any change of address of the party giving notice and from and after giving such notice, the address therein specified shall be deemed to be the address of such party for the giving of notices herein. Any party may specify up to two addresses for the giving of notices herein.

22.03 **Certificate**

Either party shall on at least fifteen (15) days prior notice to the other execute and deliver to the other a written statement certifying that this Lease is unmodified and in full force and

effect, or if modified, stating the modifications and that the Lease is in full force and effect as modified and whether or not there is any existing default on the part of the other party.

22.04 Time of the Essence

Time is of the essence in this Lease and all the provisions hereof.

22.05 Amendment

This Lease may not be modified or amended except by an instrument in writing signed by the parties hereto or by their successors or permitted assigns.

22.06 Planning Legislation

This Lease is entered into on the express condition that it is to be effective only if the provisions of the *Planning Act (Ontario)*, as amended, or any legislation in substitution therefore or in addition thereto are complied with,

22.07 Further Assurances

The Tenant and the Landlord will execute such further assurances in order to carry out the rights and benefits conferred in this Lease as may be reasonably required by the other party, in each case at the expense of the party requesting such further assurances.

IN WITNESS WHEREOF the parties have caused this Lease to be duly executed under seal.

THE CORPORATION OF THE CITY OF LONDON

Per: _____
Name:
Title:

Per: _____
Name:
Title:

WESTERN FAIR ASSOCIATION

Per: Hugh Mitchell
Name: Hugh Mitchell
Title: Chief Executive Officer

Per: Mike Woods
Name: Mike Woods
Title: Chief Operating Officer

We have the authority to bind the Corporation

Schedule A

Legal Description of C-WF Lands

Lot 60 & Part Lot 61, Plan 415(3rd) as in LC166429
Being PIN 08304-0036 (LT)

Part Lot 17, Plan 411(3rd) as in 667015
Being PIN 08304-0038 (LT)

Part of York St, Plan 411(3rd) lying between the East limit of Rectory Street to the West limit of that
Part of York Street Plan 411 (3rd) closed by LC62627
Being PIN 08304-0043 (LT)

Part of the North half of Lot 11, Concession C as in GD1067; Part Lot 17, Plan 411(3rd) and Part
Lot 61, Plan 415(3rd) as in LC166744, Lots 20, 21 & 22 Plan 411(3rd), except LC90774, Lots 49 to
59 incl., Lot 62, Lots 68 to 88 incl., Lots 100 to 108 incl., Blocks A, C & D Plan 415(3rd), Part of the
Lane Plan 415(3rd) lying to the rear of Lots 68 to 72 incl. Plan 415(3rd), Lots 18, 19, Lots 23 to 28
incl., Lots 36 to 41 incl. Plan 411(3rd), Lots 14, 15, 16, Lots 29 to 35 incl., Lots 42 to 48, incl., Plan
413(3rd), Part of King Street, Plan 415(3rd) and Part of Ontario Street, Plan 413(3rd) & 415(3rd) and
Part of York Street Plans 411(3rd) & 413(3rd) as closed by LC62627 & Block B, Plan 415(3rd) &
Block A Plan 411(3rd) as in 406775
Being PIN 08304-0039 (LT)

Part Lot 11, Concession C, designated as Parts 1, 2 & 3 on 33R-15709
Being PIN 08305-0112 (LT)

Part Lot 11, Concession C, designated as Part 7 on 33R-15709
Being PIN 08305-0113 (LT)

Part Lot 11, Concession C, designated as Parts 4, 5 & 6 on 33R-15709
Being PIN 08305-0114 (LT)

Part Lot 11, Concession C, designated as Parts 8, 9 & 10 on 33R-15709
Being PIN 08305-0115 (LT)

Part Lot 11, Concession C, designated as Parts 11, 12 & 13 on 33R-15709
Being PIN 08305-0116 (LT)

Part Lot 11, Concession C, designated as Parts 14, 15, 16 & 17 on 33R-15709
Being PIN 08305-0117 (LT)

Part Lot 11, Concession C, designated as Parts 18, 19 & 20 on 33R-15709
Being PIN 08305-0118 (LT)

Schedule B

Legal description of WF Lands

Part Lot 13 Plan 413(3rd), being Part 1 on 33R-5433
Being PIN 08304-0009 (LT)

Part Lots 63 & 64, Plan 415(3rd) as in 590527 & 603469
Being PIN 08304-0010 (LT)

Part Lot 64, Plan 415(3rd) as in LT316825
Being PIN 08304-0011 (LT)

Part Lots 65 & 66, Plan 415(3rd) as in 914072
Being PIN 08304-0013 (LT)

Part Lot 67, Plan 415(3rd) as in 594601
Being PIN 08304-0015 (LT)

Part Lots 66 & 67, Plan 415(3rd) as in 705340
Being PIN 08304-0016 (LT)

Part Lot 89, Plan 415(3rd) as in 611353
Being PIN 08304-0017 (LT)

Part Lots 89 & 90, Plan 415(3rd) as in 541550
Being PIN 08304-0018 (LT)

Part Lot 90, Plan 415(3rd) as in LC137249
Being PIN 08304-0019 (LT)

Part Lots 89 & 90, Plan 415(3rd) as in 566632
Being PIN 08304-0020 (LT)

Part Lot 91, Plan 415(3rd) as in 637515
Being PIN 08304-0021 (LT)

Part Lots 91 & 92, Plan 415(3rd) as in 637514
Being PIN 08304-0022 (LT)

Part Lot 95, Plan 415(3rd) being Part 5 on 33R-3366
Being PIN 08304-0026 (LT)

Part Lots 95 & 96, Plan 415(3rd) being Part 6 on 33R-3366
Being PIN 08304-0027 (LT)

Part Lot 96, Plan 415(3rd) as in 812743
Being PIN 08304-0028 (LT)

Part Lots 97 & 98, Plan 415(3rd) as in 709002
Being PIN 08304-0031 (LT)

Part Lot 98, Plan 415(3rd) being Parts 2, 3, 4 and 5 on 33R-12257
Being PIN 08304-0032 (LT)

Part Lots 63, 64, 65 & 66, Plan 415(3rd) being Parts 1, 2, 5 and 6 on 33R-13014
Being PIN 08304-0046 (LT)

Part Lot 65, Plan 415(3rd) as in 546208
Being PIN 08304-0047 (LT)

Part Lots 66 & 67, Plan 415(3rd) as in 616272 amended by 796225
Being PIN 08304-0048 (LT)

Part Lots 66 & 67, Plan 415(3rd) as in 681448
Being PIN 08304-0049 (LT)

Part Lots 66 & 67, Plan 415(3rd) as in 591588
Being PIN 08304-0050 (LT)

Block E, Plan 415(3rd) designated as Part 4 on 33R-14939
Being PIN 08304-0055 (LT)

Part Lots 92 & 93, Plan 415(3rd) as in 826811, save and except Part 6 on 33R-18616
Being PIN 08304-0059 (LT)

Part Lots 93 & 94, Plan 415(3rd) designated as Parts 1 & 3 on 33R-10122, save and except Part 5
on 33R-18616
Being PIN 08304-0061 (LT)

Part Lot 94, Plan 415(3rd) designated as Part 2 on 33R-10122, save and except Part 4 on
33R-18616
Being PIN 08304-0063 (LT)

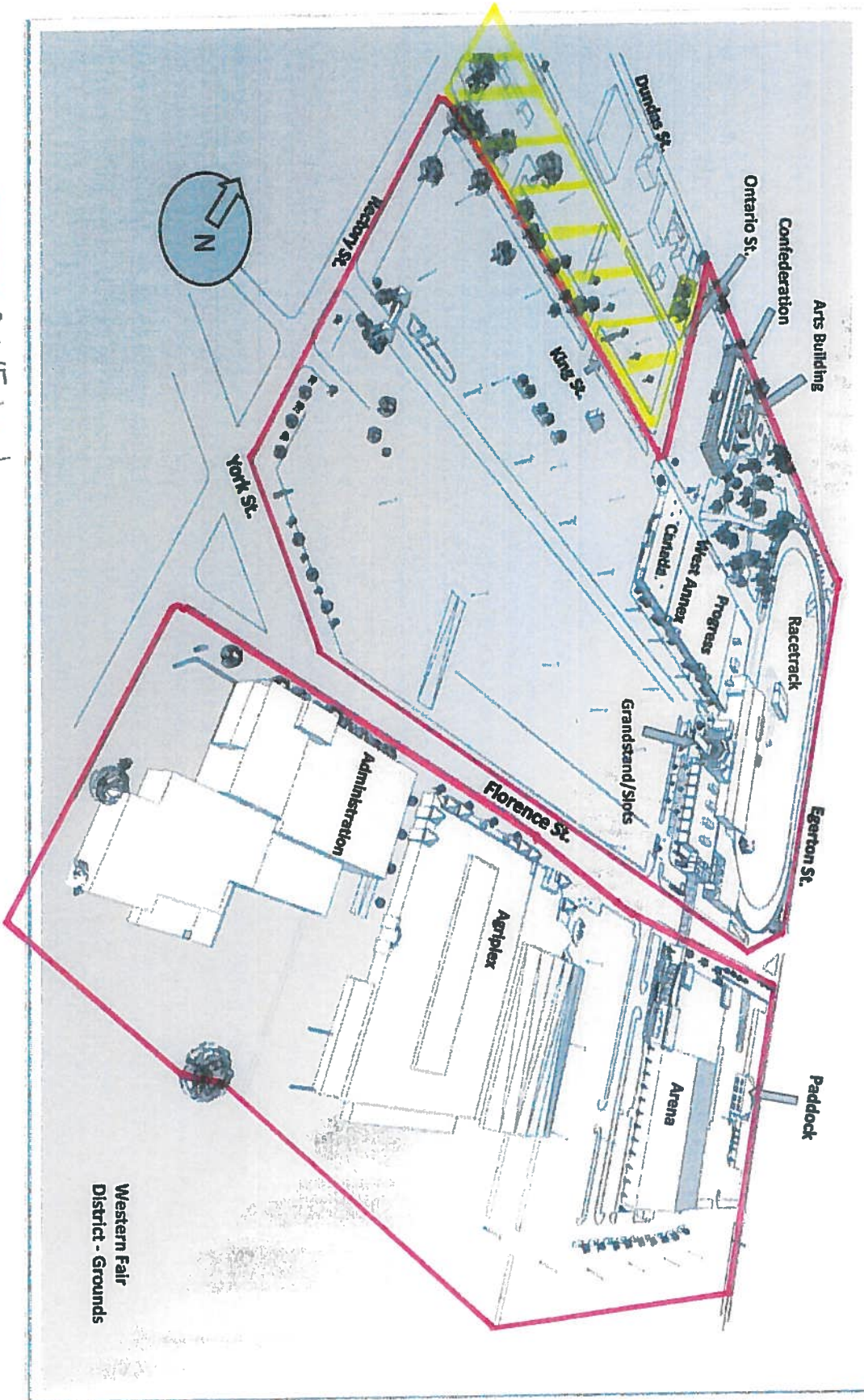
Part Lots 98 & 99, Plan 415(3rd) as in 843775, save and except Part 3 on 33R-18616
Being PIN 08304-0065 (LT)

Part Lot 99, Plan 415(3rd) as in 723191, save and except Part 2 on 33R-18616
Being PIN 08304-0067 (LT)

Part Lot 99, Plan 415(3rd) as in LT317269, save and except Part 1 on 33R-18616
Being PIN 08304-0069 (LT)

SCHEDULE C

- C-WF Lands
- WF Lands



Schedule D

Percentage Ownership of Landlord and Tenant in the Buildings as at Commencement Date

The percentage ownership of the Buildings of the Tenant and/or the Landlord as at Commencement Date is set opposite the particular Building:

<u>Building</u>	<u>Percentage Ownership</u>
Agriplex	100% owned by Tenant
Head Office	100% owned by Tenant
Paddock	100% owned by Tenant
Sportsplex	Percentage ownership is determined under joint venture agreement made as of the 1 st day of September, 2000.
Confederation Building	50% owned by Tenant 50% owned by Landlord
Progress Building	50% owned by Tenant 50% owned by Landlord
Grandstand	50% owned by Tenant 50% owned by Landlord
Canada Building	50% owned by Tenant 50% owned by Landlord
Arts Building	50% owned by Tenant 50% owned by Landlord

If ownership of a Building is less than 100%, the ownership interests are held by the particular parties as tenants in common in respect to their respective ownership interest.